IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 306 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GAUTAMKUMAR JOITARAM PATEL

Versus

AM SHAIKH,FOOD INSPECTOR

Appearance:

MR MJ BUDHBHATT with MS SADHANA SAGAR for Petitioner.

MR SN SOPARKAR for Respondent No.1.

MR ST MEHTA APP for RespondentNo.2.

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 25/09/2000

ORAL JUDGEMENT

The petitioner before this court is the accused-convict in Criminal Case No. 303/84.

The accused has the business of selling milk and

milk products in the name of 'Giriraj Dugdhalaya'. On 15th July, 1983, Food Inspector-the complainant bought certain quantity of milk from the accused which was, on examination, found to be adulterated i.e. solid non-fat contents in the milk sample were less than the minimum standard prescribed. The accused was tried by the learned Metropolitan Magistrate Court No. 6, Ahmedabad, for offence punishable under section 16 (1) (a) (i) of the Prevention of Food Adulteration Act. The adulteration of the milk sample was proved. The accused was, therefore, by judgment and order dated 8th August, 1985, convicted and was sentenced with RI for six months, and a fine of Rs.1000/-. Further SI for two months was imposed in case of default of payment of fine. Feeling aggrieved, the accused preferred Criminal Appeal No. 97/85. The appeal was dismissed by the learned Additional City Sessions Judge, Court No. 9, Ahmedabad, by his judgment and order dated 30th April, 1986. Feeling aggrieved, the accused has preferred the present Revision.

It is submitted that the adulteration of milk was of minor nature and the accused then being of 20 years of age, ought to have been released on probation, or atleast the lesser punishment ought to have been imposed upon the accused. Mr. Budhbhatti has relied upon the judgment of the Supreme Court in the matter of - KHEM CHAND VS STATE OF HIMACHAL PRADESH (AIR 1994 SC 226). In the said matter, the Hon'ble Court decided as under :

> The appellant was only a milk-vendor and the occurrence is said to have taken place in the year 1974. The sample of milk was declared to be adulterated on the sold ground that there was some deficiency in milk solids non-fats. The adulteration is of a minor nature. For these special reasons while confirming the conviction of the appellant, we reduce the sentence to three months' RI. The sentence of fine with default clause is confirmed. Subject to this modification of sentence, the appeal is dismissed ".

It is submitted that in the present case also, the accused on the date of offence was of the age of 20 years and the milk was found to be adulterated by addition of water. Similar treatment should be given to the present accused also.

I see no substance in either of the submissions. The petitioner having been convicted for offence

punishable under the Prevention of Food Adulteration Act, the question of his being released on probation does not arise. Besides, no special circmstances exist which should warrant indulgence as was done by the Hon'ble Supreme Court in the matter of Khem Chand (supra). In the said matter, the court found that the accused was only a vendor, while in the present case, the accused is a businessman selling milk and milk products in the name of 'Giriraj Dugdhalaya'. He can not be said to be a mere vendor. The adulteration of milk having been proved beyond doubt by both the courts below, no interference is warranted.

Revision is dismissed. Rule is discharged.

(MS R.M.DOSHIT J)

JOSHI